

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25-4-2006

Coram:

The Honourable Mr. Justice T.V. MASILAMANI

C.R.P. (PD) No.2164 of 2004
and
C.M.P.No.20816 of 2004

S.Sukumar ... Petitioner

vs.

M.Rangasamy Gounder ... Respondent

Civil Revision Petition against the order dated 5.11.2004 made in I.A.No.1546 of 2004 in O.S.No.266 of 2004 on the file of the District Munsif, Tiruppur.

For Petitioner : Mr.M.M.Sundresh

For Respondent : Mr.S.K.Rakhunathan

O R D E R

The revision petitioner is the defendant in the suit in O.S.No.266 of 2004 on the file of the District Munsif, Tiruppur. The respondent/plaintiff in the said suit filed the petition in I.A.No.1546 of 2004 to amend the plaint so as to include the claim of adverse possession with reference to the suit property. The petitioner herein filed a counter resisting the amendment sought for by the respondent and after hearing the arguments advanced by either side, learned District Munsif passed the impugned order allowing the petition. Hence, the revision.

2. Heard Mr.M.M..Sundresh, learned counsel appearing for the revision petitioner and Mr.S.K.Rakhunathan, learned counsel appearing for the respondent.

3. The respondent filed the said suit against the petitioner herein for declaration of his title to the suit property and for permanent injunction restraining the petitioner herein and his men from interfering with his possession and enjoyment of the suit property. He has pleaded in the plaint that the suit property was purchased by him in the year 1964 for Rs.75/- by means of an oral sale from one Kandasamy Mudaliar and continued to be in possession

and enjoyment of the same in his own right. In view of the subsequent development, he filed the petition to include the plea of adverse possession also. In the above circumstances, it has become necessary to consider whether the impugned order passed by the court below is liable to be set aside in this revision.

4. Learned counsel for the revision petitioner has contended vehemently that since the amendment sought for by the respondent, when the evidence was in progress in the trial of the suit and inasmuch as the inconsistent plea taken by the respondent, cannot be permitted under law, the revision petition has to be allowed as prayed for. He has placed reliance on the decisions of this Court, KANNAPPAN v. PARGUNAN (2000 (II) C.T.C. 219) and NEELAVATHI v. SHANMUGAM (2005 (2) C.T.C. 58), in support of such contention.

5. Per contra, learned counsel for the respondent has drawn the attention of this Court to the decision of this Court, P.SUBRAMANIA CHETTIAR v. AMIRTHAM AND OTHERS (2002 (3) M.L.J. 718), in support of his argument that a person in possession of the property claiming title to the same can very well maintain the alternative plea of adverse possession also for the simple reason that such pleas are not inconsistent ones. Further he has also submitted that since the suit was filed by the respondent for declaration of title to the suit property based on an oral sale in the year 1964 and also pleaded that he has been in possession from 1964 to 2000 when the suit was filed, the plea of adverse possession, though not specifically taken in the pleadings, could be proved by adducing evidence with reference to the continuous, open and hostile possession of the suit property for more than the statutory period. Hence, he has urged that in view of the ratio laid down in the decision referred to above and considering the facts and circumstances of the case, the impugned order is based on sound principle of law and hence sustainable.

6. As has been rightly pointed out by the learned counsel for the respondent, in the decision relied on by the revision petitioner, this Court rendered the judgment in the Second Appeal on the basis of the questions of law formulated for consideration. But on the other hand, he has pointed out that in this case, the suit is still pending trial before the trial court and therefore in view of the availability of sufficient materials in the plaint itself and having regard to the absence of specific plea of adverse possession taken by the respondent in the plaint, the order passed by the trial court permitting the respondent to amend the plaint has to be sustained in this revision. Having regard to the above factual aspect of the matter, this Court is of the view that the ratio laid down in the decision relied on by the learned counsel for the revision petitioner cannot be made applicable to the facts of this case.

7. But, on the other hand, in the decision PAPPAYAMMAL v. PALANISAMY (2005 (3) C.T.C. 292) relied on by the learned counsel for the respondent, M.KARPAGAVINAYAGAM, J. while rendering the said judgment relying on the dictum of law enunciated by the Apex Court in RAME GOWDA v. M.VARADAPPA NAIDU (2004 (1) S.C.C. 769) held that a person in possession of the property is entitled to take alternative plea of adverse possession. The relevant ratio in paragraph (28) of the said decision reads as under:-

"The contention of the learned counsel for the respondents, that the possession must be without title against a person with original title and then only adverse possession would arise, is not acceptable, since a person, who is in possession of the property, is entitled to take alternative plea." Hence, this Court finds that there is no illegality in the impugned order.

8. However, learned counsel for the revision petitioner has relied on the proviso to Order 6 Rule 17 C.P.C. in support of the proposition of law that since the respondent came forward with the proposed amendment after inordinate delay from the date of filing the suit, though such facts were within his special knowledge, he cannot be permitted to amend the plaint and he has relied on the decision S.AHAMED MEERAN v. S.KUMARASWAMY (2006 (1) C.T.C. 55) in support of such contention. As has been rightly pointed out by the learned counsel for the respondent, in the said case the suit itself was filed in the year 2002 and the petition for amendment of the plaint was filed in the year 2004. But on the contrary, as has been rightly pointed out by the learned counsel for the respondent, it is seen from the records of the case that the suit under question in this revision was presented in the year 2000 and subsequently numbered and taken on file in the year 2004 by the learned District Munsif, Tiruppur and therefore he has contended that the amendment to the said provision of law coming into force on 1.7.2002 cannot be made applicable to this case. The above factual aspects of the matter are not under dispute and therefore, this Court is of the considered view that as has been held in the decision, RETHINAM @ ANNA SAMUTHIRAM AMMAL v. SYED ABDUL RAHIM (2005 (3) C.T.C. 321), the said amendment to the proviso to Order 6 Rule 17 C.P.C. which came into force with effect from 1.7.2002 cannot be applied to the facts of the present case.

9. For the foregoing reasons, the Civil Revision Petition is dismissed. Consequently, C.M.P.No.20816 of 2004 is closed. However, there is no order as to costs.

dpp

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

The District Munsif, Tiruppur.

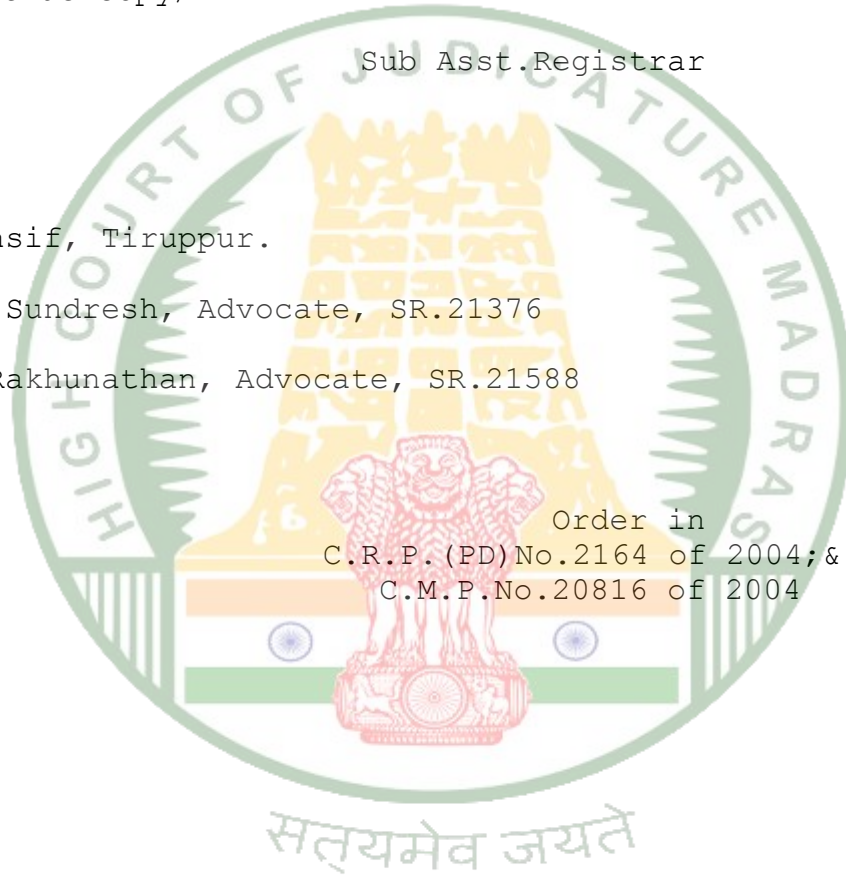
1 cc to Mr.M.M..Sundresh, Advocate, SR.21376

1 CC TO mR.s.k.Rakhunathan, Advocate, SR.21588

RVR (CO)

dv/9.5.06

Order in
C.R.P. (PD) No.2164 of 2004; &
C.M.P.No.20816 of 2004



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